L ARUUL S LURTHUSAMY v.
RINGGANAZALL PONNIGILEE & ANOR

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
VARGHESE GEORGE JCA
MARY LIM J
[CIVIL APPEAL NO: A-02(NCVC)(A)-436-03-2015]
2 DECEMBER 2016

CIVIL PROCEDURE: *Jurisdiction – Inherent jurisdiction – High Court – Originating summons dismissed by High Court – Aggrieved party filed fresh originating summons seeking reliefs and relying on premises identical to previous originating summons before another High Court – Application allowed by second High Court – Decision by first High Court reversed by second High Court – Proper and valid recourse – Whether High Court has inherent jurisdiction to reverse previous decision of another concurrent High Court*

The appellant had married one Chitradevi who later passed away, leaving a piece of land. The appellant applied for – and was granted by the land administrator ('the LA') – an order appointing him as the administrator of the estate of Chitradevi ('the order'). Through an originating summons ('2013 OS'), Chitradevi's parents ('the respondents') applied to the High Court for declarations that (i) the order was null, void and of no effect; (ii) any endorsements made by the LA in respect of the land be cancelled; and (iii) the LA re-hears the appellant's application for the administration of Chitradevi's estate. According to the respondents, the appellant was not the lawful husband of Chitradevi as he was married to one Lily Theresa. The High Court dismissed the respondents' application and ruled that the appellant's marriage to Chitradevi was valid. The respondents did not appeal against the said decision but instead chose to file fresh proceedings before another High Court Judge, against the appellant ('2014 OS'), seeking reliefs and relying on premises identical to the 2013 OS. In the 2014 OS, the respondents annexed as exhibits, copies of a *decree nisi* and of a certificate making the *decree nisi* absolute in divorce proceedings brought by the appellant against Lily Theresa with respect to his previous marriage. The Judge allowed the 2014 OS as His Lordship was convinced that the appellant had intentionally misled the court in the 2013 OS and the judgment was obtained by fraud or deception. Hence, the present appeal which orbited around the primary issue of whether the High Court, in dealing with the 2014 OS, had the inherent jurisdiction to reverse the previous decision of concurrent High Court in the 2013 OS.

Held (allowing appeal; setting aside order of High Court in 2014 OS) Per Varghese George JCA delivering the judgment of the court:

(1) The orders in the 2013 OS were regularly obtained from a High Court which had the jurisdiction and was competent to deal with such an application and issue those orders. The judge who gave the orders in the 2013 OS might have misdirected himself in law or on the facts surrounding the grievance or issue. However, that was a matter to be taken up in a proper appeal to be brought against that decision by an aggrieved party. The judge in the 2014 OS had clearly misdirected himself on the law in proceeding to entertain and consequently granting the orders sought. (paras 24 & 27)

(2) The recourses validly open to the respondent in the circumstances were either (i) to appeal against the court's order in the 2013 OS and possibly apply for material further or fresh evidence to be adduced, to have an order made reversed; or (ii) to institute separate proceedings by way of a writ action to impeach any of the orders issued in the 2013 OS on the grounds that those orders had been obtained by the appellant upon fraud or deception being perpetrated on the court. (para 26)

Bahasa Malaysia *Headnotes*

Perayu telah berkahwin dengan seorang bernama Chitradevi yang kemudian meninggal dunia, meninggalkan sebidang tanah. Perayu memohon – dan dibenarkan oleh pentadbir tanah ('PT') – satu perintah melantiknya sebagai pentadbir estet Chitradevi ('perintah'). Melalui satu saman pemula ('SP 2013'), ibu bapa Chitradevi ('responden-responden') memohon di Mahkamah Tinggi bagi pengisytiharan bahawa (i) perintah tersebut tidak sah, terbatal dan tidak memberi apa-apa kesan; (ii) apa-apa endorsmen oleh PT berkaitan tanah tersebut dibatalkan; dan (iii) PT mendengar semula permohonan perayu bagi pentadbiran estet Chitradevi. Menurut responden-responden, perayu bukan suami Chitradevi yang sah kerana perayu telah berkahwin dengan seorang bernama Lily Theresa. Mahkamah Tinggi menolak permohonan responden-responden dan memutuskan perkahwinan perayu dengan Chitradevi sah. Responden-responden tidak merayu terhadap keputusan tersebut. Sebaliknya, mereka memfailkan prosiding baharu di hadapan Hakim Mahkamah Tinggi yang lain, terhadap perayu ('SP 2014'), memohon relif dan bersandar pada alasan yang serupa dengan SP 2013. Dalam SP 2014, responden-responden melampirkan sebagai ekshibit, salinan *decree nisi* dan sijil yang menjadikan *decree nisi* tersebut mutlak dalam prosiding penceraian yang dimulakan oleh perayu terhadap Lily Theresa berkaitan perkahwinannya yang lepas. Hakim membenarkan SP 2014 kerana yakin perayu dengan sengaja memperdaya mahkamah dalam SP 2013 dan penghakiman tersebut diperoleh secara penipuan atau perdayaan. Maka timbul rayuan ini yang berkisar isu tunggal sama ada Mahkamah Tinggi, dalam memutuskan SP 2014, mempunyai bidang kuasa inheren mengakas keputusan terdahulu Mahkamah Tinggi lain dalam SP 2013.

Diputuskan (membenarkan rayuan; mengetepikan perintah Mahkamah Tinggi dalam SP 2014)
Oleh Varghese George HMR menyampaikan penghakiman mahkamah:

(1) Perintah-perintah SP 2013 diperoleh dengan teratur daripada Mahkamah Tinggi yang berbidang kuasa dan kompeten untuk membicarakan permohonan dan mengeluarkan perintah-perintah sedemikian. Hakim yang mengeluarkan perintah-perintah dalam SP 2013 mungkin tersalah arah diri beliau bawah undang-undang atau berdasarkan fakta yang menyelubungi kilanan atau isu. Walau bagaimanapun, hal perkara ini sepatutnya ditangani dengan cara rayuan terhadap keputusan tersebut oleh pihak terkilan. Hakim dalam SP 2014 jelas tersalah arah diri beliau bawah undang-undang dalam mendengar dan seterusnya membenarkan perintah-perintah yang dipohon.

(2) Tindakan sah yang boleh diambil oleh responden-responden dalam hal keadaan ini adalah sama ada (i) merayu terhadap perintah mahkamah dalam SP 2013 dan memohon untuk mengemukakan keterangan lanjut atau baharu yang material, untuk mengakas perintah tersebut; dan (ii) memulakan prosiding berasingan melalui satu tindakan writ untuk mencabar apa-apa perintah yang dikeluarkan dalam SP 2013 atas alasan perintah-perintah tersebut diperoleh oleh perayu melalui penipuan atau perdayaan terhadap mahkamah.

Case(s) referred to:
Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Maju Holdings Sdn Bhd v. Fortune Health (HK) Ltd & Other Appeals [2004] 4 CLJ 282 CA ***(refd)***
Munusamy Karuppiah v. Sang Lee Company Sdn Bhd & Ors [2010] 3 CLJ 924 CA ***(refd)***
Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd [2013] 6 CLJ 673 FC ***(refd)***

For the appellant - Saranjit Singh GS; M/s Sundarajan & Assocs
For the respondent - K Paramanathan; M/s Param & Co

[Editor's note: Appeal from High Court, Taiping; Originating Summons No: 24NCVC-150-6/-2014 (overruled)).]

Reported by Najib Tamby

JUDGMENT

Varghese George JCA:

Background

[1] According to the appellant, he had married one Chitradevi a/p Ringganazall (Chitradevi) on 15 July 2001 at a Hindu Temple in Bagan Serai, Perak. The marriage was claimed by the appellant to have been registered under the Law Reform (Marriage and Divorce) Act 1976.

[2] Chitradevi however passed away on 4 December 2009. There were no children in the marriage. At the time of her death Chitradevi was the registered owner of a piece of land held under HSD9017, PT4761, Mukim Parit Buntar, Daerah Kerian (Lot 4761).

[3] The appellant applied for and on 8 February 2011 was granted by the Pentadbir Tanah Kerian an order under the Small Estates (Distribution) Act 1955 appointing him as the administrator of the estate of Chitradevi.

[4] The respondents are the parents of Chitradevi. In February 2013, the respondents applied *vide* Taiping High Court Saman Pemula No. 24NCVC-35-2-2013 (the 2013 - saman pemula) for declarations that the order of the Pentadbir Tanah Kerian of 8 February 2011 was null, void and of no effect, that any endorsements made by the Pentadbir Tanah Kerian in respect of Lot 4761 be cancelled and further that Pentadbir Tanah Kerian rehear the appellant's application for administration/distribution of Chitradevi's estate.

[5] The principal ground relied upon by the respondents for the declarations sought in the 2013-saman pemula was that the appellant was not the lawful husband of Chitradevi at the time of their purported marriage (15 July 2001). It was alleged that the appellant was still married (since 16 September 1994) to one Lily Theresa a/p Anthony Linus Peter. The respondents tendered a letter dated 11 February 2011 from the Jabatan Pendaftaran Negara as proof of this assertion. This letter also stated that there was no record with the said department of the marriage between Chitradevi and the appellant as claimed to have been registered on 15 July 2001.

[6] The High Court on 27 March 2014 dismissed the respondents' 2013-saman pemula and ruled that the appellant's marriage to Chitradevi was valid. The court also ordered that the caveat over Lot 4761, that had been entered by the respondents in the meanwhile, be removed. There was no appeal filed by the respondents against that decision.

[7] On 6 June 2014 the respondents filed fresh proceedings against the appellant *vide* Taiping High Court Saman Pemula No. 24NCVC-150-6-2014 (2014-saman pemula) seeking in the main, identical relief as was earlier sought by the respondents in the 2013-saman pemula and which, as noted above, had been dismissed by the court on 27 March 2014.

[8] The premises relied upon by the respondents in the 2014 - saman pemula were similar, save that in this latest proceedings the respondents annexed as exhibits copies of a *decree nisi* dated 6 May 2012 and of a certificate making the *decree nisi* absolute (divorce) dated 13 September 2012, in divorce proceedings brought by the appellant against Lily Theresa a/p Anthony Linus Peter with respect to his previous marriage (Alor Setar High Court Petisyen Perceraian No. 33NCVC-142-04-2012).

[9] The 2014-saman pemula was heard by another judge and on 23 February 2015 the High Court granted the respondents the declarations/orders sought in the 2014-saman pemula.

[10] The appeal before us by the appellant was against the High Court decision of 23 February 2015 in the 2014-saman pemula, which, as it would be obvious, was diametrically opposite to, and which in effect reversed, the decision of the same High Court in the respondents' 2013-saman pemula proceedings.

Judgment Of The High Court

(2014-Saman Pemula)

[11] The court seemed to have been convinced that the appellant had intentionally misled the court in the 2013-saman pemula and this principally weighed upon the mind of the learned judge in allowing the respondents' 2014-saman pemula. It was the court's finding that the judgment obtained by fraud or deception on the court in the 2013-saman pemula proceedings should not be allowed to continue and benefit the appellant. The court in acting so ruled that it had jurisdiction under its inherent powers to right a wrong and to ensure that justice was done.

[12] This was evident from a reading of the following extracts from the penghakiman:

> [11] Di dalam guaman terdahulu tersebut, responden telah menafikan alegasi pemohon pertama bahawa perkahwinan beliau dengan mendiang adalah tidak sah. *Walaupun responden mengakui bahawa beliau pernah berkahwin dengan Lily Theresa, beliau menyatakan bahawa perkahwinan tersebut tidak sah, kerana Lily Theresa telah meninggalkan beliau setelah hanya seminggu selepas mereka berkahwin*. Responden menekankan bahawa Lily Theresa telah menghilangkan diri sebelum beliau sempat menyempurnakan perkahwinannya.
>
> .....
>
> .....
>
> [14] Perbezaan kali ini adalah bahawa pemohon-pemohon dapat mengemukakan bukti bahawa perkahwinan responden dengan Lily Theresa masih wujud semasa beliau berkahwin dengan mendiang.
>
> .....
>
> .....
>
> [19] **Mahkamah ini mendapati terbukti bahawa responden tidak bercakap benar dalam guaman terdahulu** tersebut, apabila menyatakan bahawa Lily Theresa telah menghilangkan diri seminggu selepas mereka berkahwin, dan beliau tidak pernah berjumpa pagi. Ini adalah kerana *perintah penceraian tersebut dengan*

jelas membuktikan bahawa pertamanya, responden masih berhubung dengan Lily Theresa selepas perkahwinan mereka, dan keduanya, masih berkahwin dengan Lily Theresa apabila beliau kononnya berkahwin dengan mendiang.

[20] **Maka adalah nyata bahawa penghakiman yang diberi dalam guaman terdahulu tersebut telah diputuskan atas frod oleh responden**, di mana responden telah memperdayakan Mahkamah menurut peruntukan s. 44 Akta Keterangan 1950. Mahkamah ini mendapati bahawa responden telah dengan sengaja memperdayakan Mahkamah dalam guaman terdahulu, apabila tidak mengemukakan fakta dan bukti yang sebenar, iaitu status perkahwinan beliau dengan Lily Theresa.

[21] **Mahkamah ini mempunyai bidangkuasa untuk memastikan keadilan dapat dijalankan**, dan memastikan supaya pihak yang teraniaya atau yang mempunyai hak, mendapatkan hak mereka yang sah. Adalah perlu untuk Mahkamah ini memastikan supaya responden tidak dapat manfaat dari sebarang penghakiman yang telah diperolehi oleh frod atau penipuan; *Chee Pok Choy v. Scotch Leasing Sdn Bhd* [2001] 4 MLJ 346 (MR).

…

(emphasis added)

The Appeal

[13] The appellant's contention before us in this appeal, in summary, was as follows:

(a) The High Court was '*functus officio*' after the delivery of the decision in the 2013-saman pemula proceedings (*Munusamy Karuppiah v. Sang Lee Company Sdn Bhd & Ors* [2010] 3 CLJ 924 CA);

(b) The High Court should not have entertained the 2014-saman pemula which clearly was intended to review the final decision of a court of concurrent status in the 2013-saman pemula proceedings;

(c) The respondents ought to have filed an appeal if they were dissatisfied with the outcome of the 2013-saman pemula proceedings and unless such an appeal was filed, the respondents were precluded by the doctrine of *res judicata* from relitigating the issues and seeking for the same relief, which has been conclusively refused by the court;

(d) The additional or fresh evidence adduced by the respondents in the 2014-saman pemula was, in any event, available and could have been obtained by the appellant with reasonable diligence before the conclusion of the proceedings in the 2013-saman pemula (*Maju Holdings Sdn Bhd v. Fortune Health (HK) Ltd & Other Appeals* [2004] 4 CLJ 282 CA).

[14] The respondents' submission on the other hand was that the High Court had rightfully exercised its powers under its inherent jurisdiction to deal with and allow the prayers in the 2014-saman pemula. The learned judge, it was argued, was not in error to reverse the defective orders issued by the court in the 2013-saman pemula proceedings.

Our Deliberation And Decision

[15] At the outset it was relevant to take note that there was no prayer by the respondents in the 2014-saman pemula to set aside any of the orders of the High Court of 27 March 2014 dismissing the respondents' earlier 2013-saman pemula. It was also equally pertinent to note that the orders granted by the High Court on 23 February 2015 in the 2014-saman pemula proceedings did not expressly advert to or set aside any of the orders which had been made by the court when dismissing respondents' earlier 2013-saman pemula.

[16] The High Court order of 27 March 2014 in the 2013-saman pemula contained a significant finding in the following terms:

> (b) Perkahwinan Responden dengan Chitradevi a/p Ringganazall adalah sah.

In the 2014-saman pemula however, the order of the court was plainly to a contrary effect, namely, as follows:

> MAKA ADALAH PADA HARI INI DIPUTUSKAN bahawa perkahwinan di antara L. Aruul a/l S. Kurthusamy ... dan Chitradevi a/p Rengganazall ... si mati pada 15/7/2001 ... tidak sah di sisi undang-undang dan terbatal.

[17] On record now there were two contradictory pronouncements of the court on the same issue pertaining to the validity of the 'marriage' between the appellant and Chitradevi. The conclusion arrived at by the learned judge in the 2014-saman pemula appeared to be premised solely in the '*decree nisi*' and the 'certificate absolute' which had been produced by the respondents in this later proceedings, as could be discerned from the following statements in the penghakiman:

> ... perintah penceraian tersebut dengan jelas membuktikan bahawa pertamanya, responden masih berhubung dengan Lily Theresa selepas perkahwinan mereka ...,

and

> ... adalah nyata bahawa penghakiman yang diberi dalam guaman terdahulu tersebut telah diputuskan atas frod oleh responden ... .

[18] It need be pointed out that there was no other evidence referred to or for that matter, even adduced and made available to the learned judge save the '*decree nisi*' and 'certificate absolute'. We were baffled as to how merely

on those two documents now produced the court could conclude that the appellant was in a continuous relationship with Lily Theresa and a fraud had been committed in having the 2013-saman pemula dismissed and an order therein obtained as to the validity of his marriage with Chitradevi.

[19] The learned judge himself had noted that the appellant had acknowledged before the court that he had married Lily Theresa but she had deserted him immediately after the marriage and that the appellant therefore considered himself no longer married to her. It was not totally inconceivable that the appellant's marriage with Lily Theresa was a sham from the beginning as claimed by the appellant and the appellant had only taken steps lately to dissolve it for purposes of the records. In any event, there was no evidence that the fact of the divorce proceedings had been intentionally suppressed by the appellant. In our assessment, the finding that a 'fraud on the court' had been committed by the appellant was a serious matter and could not, without a proper trial as to all related facts in issue, be merely based on these two additional documents introduced in the 2014-saman pemula proceedings.

[20] Be that as it may, the single and short question on which this appeal turned, in our considered view, was whether the High Court in dealing with the 2014-saman pemula had the jurisdiction, purportedly under its inherent powers, to in effect reverse a previous decision of a concurrent High Court here specifically on the issue of the validity of the appellant's supposed marriage to Chitradevi.

[21] Counsel for the respondent cited to us the decision of the Federal Court in *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393 as authority for the proposition canvassed, namely, that the High Court had unlimited inherent jurisdiction even to set aside 'defective' orders previously issued by a High Court to meet the ends of justice.

[22] It must be pointed out that *Badiaddin (supra)* was a case where an order for sale had been issued by the High Court clearly in breach of a written law or a statutory provision under which such an order could not be sustained (in that case, the Malay Reservation Enactment (FMS Cap. 1421). Another judge of the High Court had thereafter set aside that order. The Court of Appeal on appeal against the setting aside order held that the High Court was '*functus officio*' and could not set aside the originally made order for sale. The Federal Court however ruled that the High Court could set aside its own previous order if it was shown that the first order was a nullity. Speaking through Mohd Azmi FCJ, the apex court noted that the discretion to invoke the inherent jurisdiction should always be exercised judiciously only in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice.

[23] The following excerpts from that judgment are illuminative of this guidance on the exercise of inherent jurisdiction reposed in the courts: A

Per Mohd Azmi FCJ

It is of course settled law as laid down by the Federal Court in *Hock Hua Bank*'s case that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule (which was not in issue and therefore not discussed in *Hock Hua Bank*) is where the final judgment of the High Court could be proved to be null and void on ground of illegality or lack of jurisdiction so as to bring the aggrieved party within the principle laid down by a number of authorities culminating in the Privy Council case of *Isaacs v. Robertson* [1985] AC 97 where Lord Diplock while rejecting the legal aspect of voidness and voidability in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the court '... which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and give to the judge a discretion as to the order he will make. B C D

...

...

For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court *ex debito justitiae* to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself with the special exception. E F G

Per Gopal Sri Ram JCA

Of course, so long as an order of a court is unlimited jurisdiction stands, irregular though it may be, it must be respected. But where an order of such a court is made in breach of statute, it is made without jurisdiction and may therefore be declared void and set aside in proceedings brought for that purpose. It is then entirely open to the court, upon the illegality being clearly shown, to grant a declaration to the effect that the order is invalid and to have it set aside. It is wrong to assume that such an order may only be corrected on appeal. H I

A .....

.....

It is therefore clear, in light of the principles established by high authority, that a court of unlimited jurisdiction, even in the absence of an express enabling provision, has inherent power to set aside its orders made in
B breach of written law. The ends of justice will not be met if such a power did not exist. And the procedural branch of the broad and flexible doctrine of estoppel known as *res judicata* finds no place in such a circumstance. Neither has the *functus officio* theory, which, upon close examination is merely part and parcel of the doctrine of *res judicata*, any role to play in the case.
C

(emphasis added)

[24] There was in this instant case no breach of any written law or statute occasioned by the orders made by the High Court in the 2013-saman pemula. It was regularly obtained from a court who had jurisdiction and was
D competent to deal with such an application and issue those orders. The learned judge who gave those orders might perhaps have misdirected himself in law or on the facts surrounding the grievance or issue. That was however a matter to be taken up in a proper appeal to be brought against that decision by an aggrieved party.

E **[25]** We have also now the benefit of further observations of the Federal Court on this issue. In the judgment in *Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd* [2013] 6 CLJ 673; [2013] 5 MLJ 1. Abdull Hamid Embong FCJ shed further light on this subject in the following passages:

F [35] We are thus in agreement with the appellant's stand that an earlier judgment can only be impeached when it is prohibited by statute; and that *Badiaddin* to us merely reaffirmed that rule and does not extend the inherent jurisdiction of the court to correct a perfected order or judgment beyond any statutory prohibition. ... We think that the *Badiaddin*'s phrase 'to intervene and correct a serious defect in the order' should be read in
G the context of where an order was obtained in a manner which contravened a statute, resulting in that order being illegal or made outside the jurisdiction of the court. It is in this respect that the court's inherent jurisdiction may be exercised, to strike out an earlier order, *ex debito justitiae* and without the need for file a fresh unit.

H [36] As regards the appellant's submission on the court being *functus officio* and that a fresh suit needs to be filed to strike out a previous regularly obtained order on the ground of fraud, we adopt the finding of this court in *Hock Hua Bank Bhd v. Sahari bin Murid* [1981] 1 MLJ 143 which we think has settled these issues. The headnotes from the report in that case, which need no further explanation, or expansion, is now reproduced as
I our answer to those related questions:

In this case the learned judge had made an order for sale in a foreclosure proceeding. The order was made after hearing all the parties and was made despite a claim of *non est factum* and

allegations of fraud and forgery by the respondent. The order was drawn up and perfected. There was no appeal against it. The respondent applied to set aside the judgment and this application was refused. Subsequently the respondent applied again to set aside the previous orders. The learned judge thereupon set aside his order. The appellant appealed. Held:

(1) the learned judge was *functus officio*;

(2) the court had no power under any application in the same action to alter, vary or set aside a judgment regularly obtained after it had been entered or an order after it has been drawn up, except under the slip rule, so far as is necessary to correct errors in expressing the intention of the court, unless it is a judgment by default or made in the absence of a party at a trial or hearing;

(3) if a judgment or order has been obtained by fraud or where further evidence which could not possibly have been adduced at the original hearing is forthcoming, a fresh action will lie to impeach the original judgment;

(4) in this case the learned judge had no jurisdiction to set aside his own order and the original order must be restored, leaving it to the respondent to take out a fresh action to set aside the order on the ground fraud.

[26] Having given the matter our utmost consideration, we were of the view that the recourses validly open to the respondents in the circumstances was, either:

(a) to appeal against the order of court of 27 March 2014 in the 2013-saman pemula, and therein possibly apply for material further or fresh evidence to be adduced, to have any order made therein reversed;

or

(b) to institute separate proceedings by way of a writ action to impeach any of the orders issued in the 2013-saman pemula on the grounds that those orders had been obtained by the appellant upon a fraud or deception being perpetrated on the court to secure those orders.

[27] The learned judge had therefore in this case, with respect, clearly misdirected himself on the law in proceeding to entertain and consequently granting the orders sought in his 2014-saman pemula including the declaration the appellant's marriage to Chitradevi was invalid in law and of no effect.

[28] In the result we allowed the appeal. The orders of the High Court in the 2014-saman pemula were set aside. The appellant was allowed costs of RM2,000. The deposit was ordered to be refunded to the appellant.